

**Dairy Nutrient Management Task Force  
July 11, 2000**

**Minutes**

***Minutes approved at the August 22, 2000 meeting of the Dairy Nutrient Management Task Force held in Yakima, Washington.***

[ NOTE: Future action items are underlined in the minutes. ]

The Dairy Nutrient Management Task Force ("Task Force") met in the Cherberg Building meeting rooms B and C on the Capitol Campus in Olympia on July 11, 2000. This was the first meeting of the Task Force since passage of Substitute Senate Bill 6781 recreating the Task Force.

Senator Bob Morton called the meeting to order at 10:10 a.m. and invited all attendees to introduce themselves. Conservation Commission staff providing support at this meeting were Tom Salzer and Vicki Flynn.

Attending were:

- Debbie Becker (Wash. State Dairy Federation)
- Dick Bengen (dairy industry representative)
- Representative Bruce Chandler (Legislature)
- Chris Cheney (Wash. State Dairy Federation)
- Dan DeGroot (dairy industry representative)
- Vicki Flynn (Conservation Commission)
- Dave Johnson (Legislative staff)
- Phil KauzLoric (Ecology)
- Ken Koch (Ecology)
- Bob Lee (Legislative staff)
- Representative Kelli Linville (Legislature)
- Steve Meyer (Conservation Commission)
- Senator Bob Morton (Legislature)
- Senator Marilyn Rasmussen (Legislature)
- Tom Salzer (Conservation Commission)
- Ron Shavlik (USDA Natural Resources Conservation Service)
- John Stuhlmiller (Legislative staff)
- Steve VanBatavia (dairy industry representative)
- Dick Wallace (Ecology)
- Bruce Wishart (People for Puget Sound)

***Task Force membership***

Staff provided a summary of membership status for the Task Force. While the legislation (Substitute Senate Bill 6781) calls for no more than 15 members, the membership listed in the bill totals 16 members. The legislators present confirmed that the intent of the bill was to have key groups represented, and advised that 16 members is the correct number.

Staff reported that the member representing public health districts was unable to participate this year. Assistance in filling this slot has been requested from the Washington Association of Counties. The group agreed that representation of public health districts should be pursued by staff. Senator Rasmussen suggested someone involved with public health permitting would be a good choice.

Staff reported they had not sought confirmation from a statewide association representing oyster growers for a member. The consensus of the group was to contact such a group for representation of the shellfish industry. Representative Kelli Linville identified Whatcom County shellfish issues as particularly visible. Bruce Wishart (People for Puget Sound) suggested contacting Taylor United for a possible alternate member.

Representative Linville noted the Cooperative Extension Service ("CES") is a participant in dairy nutrient management issues, both locally and statewide, and they are key entities in Regional Technical Assistance Teams described in RCW 90.64. However, CES is not listed in SSB 6781 as a group with a member participating in the Dairy Task Force. Senator Morton stated we needed their expertise and perspective. Debbie Becker (Dairy Federation) noted the Washington State University/Cooperative Extension Service would soon be interviewing for a dairy nutrient management specialist through their Safe Food Initiative, and that person might be a good candidate to work with the Task Force. Senator Rasmussen also provided a contact at the WSU/CES Puyallup Research Station. The consensus of the group was for staff to contact Washington State University/Cooperative Extension Service and request appointment of an individual to participate in the Task Force process.

Staff described four categories of individuals involved in the Task Force process:

1. Members
2. Alternates
3. Participants
4. Staff

Members are those individuals appointed to sit on the Task Force. Alternates are individuals who may fill in for members when necessary. Participants are individuals who have expressed an interest in remaining involved in the process on an informal basis. Staff are individuals providing support services to members of the Task Force. Meeting packets and other information will be sent to all four categories.

### ***Review of accomplishments and Task Force charges***

A handout developed by staff showing Dairy Nutrient Management Act events and milestones was distributed and briefly reviewed. Staff presented a scheduling matrix summarizing major tasks before the Task Force.

The matrix was revisited later in the meeting and tentative meeting dates were selected as follows:

Date	Location or vicinity	Special activities
August 22, 2000 (Tuesday)	Yakima vicinity	Dairy tour
September 20, 2000 (Wednesday)	Olympia vicinity	
October 17, 2000 (Tuesday)	Skagit or Sumas area	Dairy tour
November 21, 2000 (Tuesday)	Olympia vicinity	Dairy tour

Staff is to organize the August 22 meeting in the Yakima area, including tour of a dairy facility.

Senator Rasmussen asked if activities of the Task Force must be included in the legislative calendar. Representative Chandler asked whether meetings of the Task Force were subject to Open Public Meetings Act requirements. Bob Lee (Senate staff) replied that the Legislative meeting schedule is only for committees staffed by the Legislature, and this Task Force is staffed not by the Legislature but by the Conservation Commission. Staff will work with Lee to resolve these issues.

### ***Decision model***

Senator Morton noted that in 1999, the Task Force made decisions by consensus. We still have some things in front of us that were to have been done last year. Perhaps we would have moved forward faster had there been motions and votes. A full discussion followed.

David Johnson (counsel to the Senate Natural Resources Committee and Parks and Recreation Committee) developed five “canons” to guide decision making by the Task Force:

1. The Task Force shall fully consider all views prior to deciding issues.
2. The Task Force shall strive to achieve consensus.
3. Two-thirds of the members present and voting affirmatively are required to pass a measure.
4. Vote counts shall be recorded.
5. The Task Force shall allow majority and minority positions to be stated in reports issued by the Task Force.

**Representative Chandler moved and Senator Rasmussen seconded to adopt the canons.**

During the ensuing discussion, the issue of a quorum surfaced. Voting members present were:

- Dick Bengen (dairy industry representative)
- Representative Bruce Chandler (Legislature)
- Dan DeGroot (dairy industry representative)
- Representative Kelli Linville (Legislature)
- Steve Meyer (Conservation Commission)
- Senator Bob Morton (Legislature)
- Senator Marilyn Rasmussen (Legislature)
- Ron Shavlik (USDA Natural Resources Conservation Service)
- Steve VanBatavia (dairy industry representative)
- Dick Wallace (Ecology)
- Bruce Wishart (People for Puget Sound)

**Representative Linville offered a friendly amendment to add a sixth canon, namely, that nine or more voting members must be present at a meeting to have a quorum. Representative Chandler accepted the friendly amendment. This motion passed without opposition.**

**Senator Morton then called for the vote on the primary motion. The vote was ten in favor and one opposed, and the motion was declared passed.**

Bruce Wishart requested that the following be made available to the Task Force as soon as possible: notice of meetings; a list of action items; and adequate, clear agendas.

### ***Selection of chairperson(s)***

The Task Force discussed selection of chair(s). Representative Chandler nominated Senator Morton as chair; Senator Morton declined. The Task Force then discussed having co-chairs.

**Dick Wallace moved that the Task Force select co-chairs. Representative Linville seconded. Motion carried without dissent.**

**Representative Linville nominated Senators Morton and Rasmussen as co-chairs of the Task Force. There being no other nominations forthcoming, this nomination was ruled a motion. Dan DeGroot seconded the motion which passed without dissent.**

### ***Status of inspections and penalties***

#### **Inspections**

Dick Wallace (Ecology) briefly summarized some history relating to dairy inspections and reported on the current status of inspections. Ecology has completed the initial round of inspections of all registered dairies in Washington State.

Becker described some recent issues relating to inspections and penalties assessed by Ecology against dairy producers. She noted part of the problem is how Ecology uses Administrative Orders, Notices of Correction and other formal and informal actions.

In response to a question, Phil KauzLoric (Ecology) noted that financial penalties are not assessed against producers based on the "potential to pollute" but only on actual discharges. Senator Rasmussen stated the need to have terms like "potential to pollute" more clearly defined.

Dick Bengen (Dairy industry representative) asked if any Notices of Correction or Notices of Violation came from complaints. KauzLoric answered yes, but those numbers aren't captured on the summary sheet before the Task Force.

There was concern about whether the total number of enforcement actions (219) was overstated. Permits requested voluntarily (i.e., not required as part of an Ecology action) should not be included in the total of enforcement actions.

Senator Morton suggested that inspections based on complaints should be divided into two categories: those found to be valid complaints, and those found to be without merit. Dan DeGroot (Dairy industry representative) asked whether complaints had increased or decreased over the past three years. Becker inquired whether complaints were more concentrated in some regions. Senator Morton noted the need to use ratios in comparing data from prior years because we used to have more dairies.

Representative Linville asked if Ecology kept records of multiple complaints about individual operations and asked how Ecology dealt with that issue. KauzLoric responded that Ecology tries to ferret out repeat complaints early in the process.

## Penalties

KauzLoric reviewed the summary of penalties provided to the Task Force. A total of \$61,966 went to the Dairy account established in RCW 90.64 and not to the Coastal Protection Account. Meyer noted the Conservation Commission will need to pass a motion in order to use Dairy Fund money to provide technical assistance support to conservation districts.

He noted a penalty recipient can request a reduction in the penalty through an "Application for Relief." The recipient can then go to the Pollution Control Hearings Board if still not satisfied. Penalties not paid are sent to collection. If still not paid, Ecology can try a second collection agency. After that, it may go to the Attorney General for action.

Wallace noted Ecology has a matrix to guide them in setting penalty amounts. In response to a question about the amount Ecology spends to litigate delinquent penalties, Wallace responded they might be able to break out attorney time. Wishart stated his experience is that the inspector's supervisor won't let inspectors assist the Attorney General. Senator Morton asked Ecology representatives to total up how much was spent on litigation for the next Task Force meeting.

Representative Linville stated the purpose of the Act was compliance. She asked how many farmers could have come into compliance without the assessment of a penalty, and asked Ecology to think about technical assistance vs. the penalty system for achieving compliance. Wishart wished to go on record that 90 percent or more cases can be dealt with through technical assistance rather than imposing penalties.

Becker noted the original intent was compliance and raised a question about equitable treatment. For example, penalties assessed against municipal sewage plants with discharges and discharges related to horse manure are not proportionate to what dairy producers are getting hit with. KauzLoric added that very few dairies Ecology penalized were first-time offenders; most had a history of problems.

Senator Rasmussen praised Ecology for trying so hard to work with producers that others might have fined. She suggested Ecology needs to help the public understand the differences in kinds of waste.

Wishart said so much is site specific that a cut-and-dried approach to compliance is overwhelming. Penalties are a small part of the total solution. He suggested there needs to be a lot of "prosecutorial discretion" by dairy inspectors. Steve VanBatavia (Dairy industry representative) added Ecology needs to take personal issues out of the decision to impose penalties.

Chris Cheney (Dairy Federation) asked how penalties are reduced, e.g., what kind of excuses or reasons are offered? KauzLoric responded that the reasons vary widely.

Representative Linville inquired about the training level of inspectors. She is interested in the qualifications and experience required to become a dairy inspector. Senator Morton asked Ecology to address this at the next Task Force meeting.

### ***Conservation district requests for funds***

Steve Meyer (Conservation Commission) discussed progress achieved to date by conservation districts. He presented some first-pass straight-line projections showing estimates of the number of dairies and plans completed by the approval and certification deadlines.

Meyer noted he has joined forces with other states in working toward restoration of funding for Natural Resources Conservation Service technical field staff. He said there had been a 10 to 15 percent reduction in technical staff in Washington State.

Representative Linville asked if conservation districts are limited by the Commission in the number of plans per month they can develop. Meyer responded that the Commission does not place any limit on the number of plans a district can develop or approve or certify. The Commission currently estimates an average of about 200 hours of technician time are required to develop and fully implement a single dairy nutrient management plan. This equals about 10 plans per technician per year. Ron Shavlik (NRCS) noted this figure can also depend on the individual dairy producer's ability and willingness to proceed. Meyer noted that technicians do not develop plans one at a time but instead work on many plans concurrently.

Representative Linville asked if there was a limitation on hiring outside planners or contracting for planning services. Meyer said the Commission provides funding to conservation districts, and the districts can choose how to utilize the funding.

DeGroot asked about timelines for dairies under permit. KauzLoric noted that timelines are different if a dairy is under permit. DeGroot asked how Ecology would view plans that had been amended. The issue of amending plans remains open.

### **Nutrient Management and phosphorus index**

Discussion regarding changing NRCS practices ensued, including some conversation about the use of a phosphorus index. Lee said the state can't delegate authority to a federal agency, even if it is simply by referencing NRCS standards. Becker noted the intent of SB 6161 was to base the nutrient balance on nitrogen, but now we have to use other nutrients.

There was some discussion of activities of the NRCS in working on nutrient management issues, most notably that of utilizing phosphorus in balancing nutrients. Wishart inquired about notice to environmental interest groups of NRCS meetings on this subject. Becker noted they received three days notice.

Shavlik noted that NRCS policies are available on the NRCS websites (state and national).

Lee said he would draft a letter expressing the Task Force's concerns and pass it by the Conservation Commission before sending it to NRCS.

Representative Linville inquired about incentives for implementing plans, noting there was an economic advantage to people who drag their feet. She also inquired about whether plans were publicly disclosable. Meyer responded that the Conservation Commission had requested and received a formal opinion from the Office of the Attorney General on this matter. Staff will send a copy of the Attorney General opinion to Task Force participants.

### ***Next meeting and adjournment***

The next meeting will be held in the Yakima area and will include a tour of a dairy.

There being no other business before the Task Force, the meeting was adjourned at 4:00 p.m.

### **Summary of action items**

1. Representation of public health districts on the Task Force should be pursued by staff.
2. A statewide association representing oyster growers should be asked to appoint a member to the Task Force.
3. Staff should contact Washington State University/Cooperative Extension Service and request appointment of an individual to participate in the Task Force process.
4. Staff will work with Bob Lee to resolve publication of meeting schedules and Open Public Meeting Act issues.
5. Staff is to organize the August 22 meeting in the Yakima area, including tour of a dairy facility.
6. Ecology representatives were asked to provide total amount spent by Ecology on litigating penalties for the August meeting.
7. Ecology representatives were asked to report at the August meeting on the qualifications and training required to become a dairy inspector for Ecology.
8. Staff will send a copy of the Attorney General opinion received by the Conservation Commission to all Task Force participants.

### **Summary of motions**

1. M/S by Chandler/Rasmussen to adopt five canons to guide decision making by the TASK FORCE. Friendly amendment offered/accepted by Linville/Chandler to add sixth canon about quorum. Amendment passed without opposition. Main motion passed, 10 for, 1 against.
2. M/S by Wallace/Linville to have co-chairs. Motion carried without opposition.
3. M/S by Linville/DeGroot nominating Senators Morton and Rasmussen as co-chairs. Motion carried without opposition.

Respectfully submitted,

Tom Salzer  
Vicki Flynn